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JACKSON COUNTY COURTHOUSE

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MEMORANDUM

TO: RONALD L. JURGESON, COUNSEL
BOARD OF EQUALIZATION

FROM: BRYAN O. COVINSKY *BOC*
COUNTY COUNSELOR

DATE: JULY 17, 2019

RE: BOARD OF EQUALIZATION LEGAL ISSUES

This memorandum will address some of the legal issues raised by the memorandum of Jackson Board of Equalization (BOE) member Preston Smith, dated July 18, 2019.

Under Missouri law, The authority and duty of a board of equalization is to equalize the valuation and assessments so that all the property shall be entered on the tax book at its true value. See section 138.050 (all statutory citations are to RSMo 2016 unless otherwise indicated). Section 137.115.10, RSMo Supp. 2018, does not authorize the BOE to arbitrarily limit an increase in valuation for an alleged inadequate physical inspection. The property is to be valued at its *true value in money* (fair market value) based upon the evidence in the record.

Property owners who believe that valuations determined by the Assessor in the 2019 reassessment are not correct have due process rights to appeal such determinations to the BOE, and to appeal BOE decisions to the Missouri State Tax Commission (STC). The BOE has extended the deadline for filing appeals of the Assessor's 2019 valuation determinations to July 29, 2019. In the event that any such appeal alleges an inadequate physical inspection of a parcel under section 137.115.10, and seeks an arbitrary capping of an increase in valuation without regard to the true value in money of the parcel, the Assessor will be prepared to provide appropriate evidence of a physical inspection of the subject parcel in accordance with industry standards, and provide appropriate evidence of the true value in money of the subject parcel.

A property owner raising such an argument may not even be aware that an on-site inspection of the parcel has been conducted. An illustrative case in point involved a parcel purchased in early 2017 at a price more than 13.8% greater than the market value on the then current tax rolls. That below market valuation continued for 2017 and 2018. Shortly after that purchase, as evidenced by construction permits in the Assessment file, a substantial, six-figure addition/improvement was made to the parcel at a cost of more than 30% of the purchase price. The parcel's owner filed an informal review request asserting that the 2019 valuation increase should be capped at 15% for lack of an on-site physical inspection. That owner was not aware that, following completion of the noted addition/improvement, an on-site physical inspection was conducted in accordance with the standard procedures of the Assessment Department. The adoption of Mr. Smith's proposal would arbitrarily reduce the market valuation of that parcel on the tax books for 2019 and 2020 to an amount less than the 2017 purchase price.

The reference to section 137.115.12 in Mr. Smith's memo is not relevant. That subsection does not apply to Jackson County. The clear language of section 115.015.13 makes the provisions of section 137.015.12 applicable to St. Louis County only.

It is important to note that the requirement of a physical inspection in section 137.115.10 applies only to subclass (1) real property established in article X, section 4(b) of the Missouri Constitution and defined in section 137.016.1(1), RSMo Supp. 2018 as follows:

- (1) **"Residential property"**, all real property improved by a structure which is used or intended to be used for residential living by human occupants, vacant land in connection with an airport, land used as a golf course, manufactured home parks, bed and breakfast inns in which the owner resides and uses as a primary residence with six or fewer rooms for rent, and time-share units as defined in section 407.600, except to the extent such units are actually rented and subject to sales tax under subdivision (6) of subsection 1 of section 144.020, but residential property shall not include other similar facilities used primarily for transient housing. For the purposes of this section, **"transient housing"** means all rooms available for rent or lease for which the receipts from the rent or lease of such rooms are subject to state sales tax pursuant to subdivision (6) of subsection 1 of section 144.020;

It is also important to note that section 137.115.10 does not apply to an increase in value by reason of new construction or improvements.

Mr. Smith's proposal to arbitrarily limit valuation increases would on its face apply to all parcels, of every classification (commercial, residential, and agricultural), and to valuation increases due to new construction and improvements.

As stated in the STC's *Board of Equalization Workshop 2019* handbook, "The question in interpreting a statute using the word "shall" is whether the statute is directory or mandatory." If the statute includes a provision setting forth the consequence for the nonoccurrence of the "shall" action, the statute is mandatory. On the other hand, if the statute prescribes no consequence for the nonoccurrence of the "shall" action, the statute is directory. There is no stated statutory consequence for failure to conduct a physical inspection in section 137.115.10. Thus, the requirement of a physical inspection in section 137.115.10 is directory, not mandatory. According to *Black's Law Dictionary*, a directory statutory provision is "a mere direction or instruction of no obligatory force...."

In any hearing on a BOE appeal, the Assessor will be prepared to carry the Assessor's burden of proof under the law.

Mr. Smith's memorandum contains statements concerning fairness and equity. However, his proposals, if adopted, would result in substantial inequities and unfairness and invite discrimination litigation. The proposals seek to undo significant improvements in equity in sales ratios within the County from 2018 to 2019, and would unfairly impose a greater tax burden upon the many thousands of property owners who would likely see a decrease, no change, or a minor increase in property tax under the Assessor's 2019 valuations.

Under the Assessor's 2019 valuations and the estimated non-binding tax levies of all taxing jurisdictions as reflected in the 290,541 reassessment notices that were recently mailed, more than 39,000 parcels would see no change or a decrease in property tax, 197,699 would see property tax increases of \$500 or less and fewer than 9,000 would see an increase of more than \$2,000. This is for properties in all classifications (commercial, residential and agricultural). If valuations are arbitrarily capped as proposed by Mr. Smith, it is likely that the Missouri Constitution's Hancock Amendment mandatory levy rollbacks would be less than as projected in the estimated non-binding tax levies shown in the reassessment notices.

Mr. Smith's proposal would cap all parcel valuation increases regardless of classification, including limiting appropriate valuation increases for previously undervalued parcels. That would place an unfair burden on the owners of parcels that had not been previously undervalued.

It appears that Mr. Smith's memorandum contemplates the entire BOE membership voting on the proposals. That would not be proper. The proposals should be introduced and voted on only by the three County permanent appointees and the applicable city and school district appointees for the parcels subject to the proposal. A representative of one school district or municipality has no authority to introduce or to vote for or against a valuation change of a parcel located outside of that district or municipality.

Again, the authority and the duty of the BOE is to equalize the valuation and assessments so that all the property shall be entered on the tax book at its true value. Placing an arbitrary limit on valuation increases as proposed in Mr. Smith's memorandum would defeat that and would be contrary to the oath that each member of the Jackson County BOE has taken.

cc: Ed Stoll
Gail McCann - Beatty